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May 5, 2006

Mr. Dennis E. Breitzman
Area Manager
Dakotas Area Office
Bureau of Reclamation
P.O. Box 1017
Bismarck, North Dakota
58502-1017
United States of America

Dear Mr. Breitzman:

On behalf of the Government of Canada, I would like to offer the following remarks on the preparation of the draft environmental impact statement (EIS) for the Northwest Area Water Supply (NAWS) Project. I am primarily concerned about possible impacts the project could have on Canadian waters. Therefore, the scope of the EIS should include a full consideration of potential transboundary impacts on Canada.

The NAWS Project must conform to the *Boundary Waters Treaty* (1909). Of particular relevance is article IV of the Treaty which provides that "the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other."

I would also draw the Bureau of Reclamation's attention to guidance from the White House Council on Environmental Quality (CEQ) on the application of the *National Environmental Policy Act* (NEPA) to U.S. federal actions in the United States with transboundary effects. In its July 1997 memorandum to federal agencies, CEQ noted, among other things, that "based on legal and policy considerations, CEQ has determined that agencies must include analysis of reasonably foreseeable transboundary effects of proposed actions in their analysis of proposed actions in the United States." For further clarity, CEQ adds that U.S. federal agencies "should be particularly alert to actions that may affect migratory species, air quality, watersheds, and other components of the natural ecosystem that cross borders, as well as interrelated social and economic effects" (emphasis added).

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The Government of Canada requests that the draft EIS for the NAWS Project include the potential environmental, social and economic impacts on Canada associated with biota transfer from the Missouri River into the Hudson Bay drainage basin. This analysis should include the full potential impacts on the Souris River and Lake Winnipeg. In this respect, the Government of Canada wishes to underline its April 5, 2006 response to the draft EIS for the Red River Valley Water Supply Project, and in particular the natural capital valuation framework provided to the Bureau. A full economic assessment of potential transboundary costs should employ this framework.

With regard to meeting the information needs for conducting its analysis of the potential transboundary impacts of the NAWS Project, the Government of Canada would note CEQ's direction that "agencies may rely on available professional sources of information and should contact agencies in the affected country with relevant expertise." The Government of Canada would welcome opportunities for technical discussions with the Bureau of Reclamation on the transboundary implications of the NAWS Project.

While the notice of intent and its supporting information make mention of the important legal decision regarding the insufficiency of the earlier environmental assessment of the NAWS Project, the Government of Canada would wish to ensure that the NAWS Project's EIS takes into account and complies with the views and decisions expressed by the U.S. District Court in *The Government of Manitoba v. Norton et al.*, -- civil action no. 02-cv-2057 (RMC).

The question of inter-basin biota transfer remains a central matter of concern to the Government of Canada which wishes to ensure that appropriate biota treatment/containment measures are put in place should this effort proceed. Canada believes that the 1977 International Joint Commission's recommendations on the Garrison Diversion Unit project remain relevant to the NAWS Project. This earlier proposal also pursued an inter-basin diversion from the Missouri River into the Hudson Bay drainage basin. The Commission found that the overall biological impact associated with the completion and operation of the Garrison Diversion Unit was potentially severe and likely to be irreversible. The Commission recommended that:

If and when the governments of Canada and the United States agree that methods have been proven that will eliminate the risk of biota transfer, or if the question of biota transfer is agreed to be no longer a matter of concern, then the construction of that portion of the Garrison Diversion Unit which would affect waters flowing into Canada may be undertaken provided the following conditions are met:

- (a) Any agreed modifications or other measures required to resolve the interbasin biota transfer issue are incorporated into the project.

- (b) An agreement has been concluded for payment by the United States of the capital and operating costs of the mitigating measures in Canada made necessary by the Garrison Diversion Unit.

The NAWS Project's EIS should identify treatment alternatives that represent the best available technology to prevent and control the transfer of non-native species from the Missouri River watershed to the Hudson Bay drainage basin. The treatment alternatives should include recommended operation and maintenance procedures of treatment plants and pumping facilities that would support the prevention of accidental transfer of untreated water from the Missouri to the Hudson Bay drainage system.

As discussed in its response to the draft EIS for the Red River Valley Water Supply Project, the Government of Canada believes the risk and impact assessment of a possible inter-basin biota transfer undertaken to support that proposal inadequately characterized the true risk to Canada. Like the NAWS Project, the Red River Valley Water Supply Project is an effort to divert water from the Missouri River into the Hudson Bay drainage basin. The application of the contested analysis and/or support studies from the Red River Valley Water Supply Project to the NAWS Project's EIS would be equally inappropriate.

I hope that you will take these matters into account in the development of the draft environmental impact statement for the NAWS Project. Should you have any questions, or require any additional information, please do not hesitate to contact me at (613) 944-6909.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Tobias Nussbaum', is written over a faint, larger signature.

Tobias Nussbaum
Director
U.S. Relations Division

cc: Terry Breese, U.S. Department of State